

OVERVIEW

THE ROLE OF RCRA ARARs IN THE CERCLA SEDIMENTS REMOVAL ACTION CONTEMPLATED FOR SAUGET SITES AREA I, DEAD CREEK SECTORS B, C, D & E

This overview summarizes key concepts relevant to the removal of impacted Dead Creek sediments in Sauget, Illinois. The proposed action is to be conducted as a **time-critical removal** action. Although CERCLA §121(d)(2) specifies that Superfund **remedial** actions shall attain applicable or relevant and appropriate requirements (ARARs), on-site **removal** actions may meet ARARs **to the extent practicable**, considering the exigencies of the situation. Consequently, the U.S. Environmental Protection Agency (EPA) has been given considerable latitude in determining whether a removal action must attain ARARs.

Although the EPA can use considerable discretion to define the ARARs that must be attained by a removal action, it may be useful to review the pertinent factors that govern whether RCRA requirements may be deemed ARARs for a Superfund response.

RCRA Subtitle C requirements for the treatment, storage and disposal of hazardous wastes (*e.g.*, closure requirements or land disposal restrictions) are applicable for a Superfund remedial action if the following conditions are met:

The waste is a RCRA hazardous waste, and either:

The waste was initially treated, stored or disposed of after the effective date of the RCRA requirement, or

The CERCLA response constitutes treatment, storage or disposal.

The sediments in Dead Creek have been impacted by releases of hazardous substances prior to the promulgation of the Resource Conservation and Recovery Act (RCRA). Therefore, if we assume that the Dead Creek sediments may contain listed or characteristic wastes, then RCRA Subtitle C requirements may be ARARs based upon a determination that the proposed action constitutes treatment, storage or disposal.

The EPA has determined that disposal occurs when wastes are placed in a land-based unit. However, movement within a unit does not constitute disposal or placement, and at CERCLA sites, an area of contamination (AOC) can be considered to be comparable to a unit. Therefore, movement/consolidation within an AOC does not constitute placement or disposal.

The EPA provides an in-depth discussion on the topic of land disposal in the preamble to the National Contingency Plan (55 FR 8758-8760). The following excerpts provide additional details:

"The preamble also discussed when a CERCLA action constitutes 'land disposal,' defined as placement into a land disposal unit under section 3004(k) of RCRA...It equated an area of contamination (AOC), consisting of continuous contamination of varying amounts and types at a CERCLA site, to a single RCRA land disposal unit, and stated that movement within the unit does not constitute placement."

"...EPA believes that it is appropriate generally to consider CERCLA areas of contamination as a single RCRA land-based unit, or 'landfill'."

"The central concern of Congress in establishing the LDR program was to reduce or eliminate the practice of disposing of untreated hazardous waste at RCRA hazardous waste facilities. The primary aim of Congress was prospective rather than directed at already-disposed waste within a land disposal unit."

"Thus, for the reasons outlined above, EPA believes that the existing interpretation, that movement of waste within a unit does not constitute 'land disposal' for purposes of application of RCRA LDRs, is reasonable."

"...EPA's experience under CERCLA has been that treatment of large quantities of soil and debris containing relatively low levels of contamination using LDR 'best demonstrated available technology' (BDAT) is often inappropriate."

"Based on EPA's experience to date and the virtually unanimous comments supporting this conclusion, EPA has determined that, until specific standards for soil and debris are developed, current BDAT standards are generally inappropriate or unachievable for soil and debris from CERCLA response actions..."

The Sauget Area I site encompasses Dead Creek and the surrounding developed and undeveloped lands. This Site is being extensively investigated under the terms of an EPA Administrative Order on Consent. The proposed consolidation area is located within the area of investigation. Thus, it is appropriate, and fully supported by the NCP, to approve the proposed consolidation of Dead Creek sediments in a cell within this area of contamination. The proposed removal action would not trigger RCRA Subtitle C disposal restrictions or requirements.